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JASON EDWARD THOMAS CARDIFF  
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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 JASON EDWARD THOMAS  
18 CARDIFF,

19 Defendant.  
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Case No. 5:23-cr-00021-JGB

**JASON CARDIFF'S RESPONSE TO  
GOVERNMENT'S EX PARTE  
APPLICATION FOR: (1)  
DECLARATION OF FUGITIVE  
STATUS, (2) ORDER VACATING  
TRIAL DATE AND TOLLING OF  
SPEEDY TRIAL ACT, AND (3)  
ISSUANCE OF ARREST  
WARRANT**

25 Defendant, Jason Cardiff opposes the Government's Ex Parte Application for  
26 declaration of fugitive status, order vacating trial date and tolling of Speedy Trial Act  
27 and Issuance of Arrest Warrant.  
28

1           **I. Failure to Follow Local Rules**

2           Defendant objects to this motion being addressed on an *ex parte* basis. L.R. 7-  
3 19-1 provides, in pertinent part, that: L.R. 7-19.1 “Notice of Application. It shall be  
4 the duty of the attorney so applying (a) to make reasonable, good faith efforts orally to  
5 advise counsel for all other parties, if known, of the date and substance of the proposed  
6 ex parte application.” (emphasis supplied) The Court should deny the application  
7 because the Government did not advise counsel that any of the motions were going to  
8 be filed *ex parte*. The Government asserts that they “informed defense counsel of its  
9 intent to file the *instant pleading* at the hearing on January 30, 2025 and by email on  
10 January 31, 2025.” Dkt. 190 at 2.

11           However, the January 31, 2025 email stated that the prosecutors were going to  
12 file a motion to declare Defendant a fugitive, to suspend deadlines under the Speedy  
13 Trial Act and to issue bench warrant; and file a Motion for Order Forfeiting Bail.  
14 **Exhibit A**, Declaration of Stephen Cochell, Ex. 1. Contrary to the Government’s  
15 representations to the Court, neither the transcript of the January 30, 2025 motions  
16 hearing, nor the January 30, 2025 email *remotely* suggests that the motion would be  
17 filed as an *ex parte* application. Moreover, the January 31, 2025 email does not disclose  
18 the Government’s intention to ask to vacate the trial date.

19           Nor has the Government argued or set out any facts as to why this matter should  
20 be handled as an emergency motion. In response to Defendants Ex Parte Application  
21 for a Restraining Order, Production of Documents and Related Communications, the  
22 Government vigorously argued that *ex parte* applications are solely for extraordinary  
23 relief stating:

24                     The Mission Power Eng’g Co. decision cited in the Order  
25                     further explains the appropriate circumstances for seeking  
26                     *ex parte* relief. “*Ex parte* motions are rarely justified.”  
27                     Mission Power Engineering Co. v, 883 F. Supp. at 490.  
28                     “[F]iling an *ex parte* motion . . . is the forensic equivalent  
                      of standing in a crowded theater and shouting, Fire! There  
                      had better be a fire.” Id. at 492 (internal quotations

1 omitted). “It must show why the moving party should be  
2 allowed to go to the head of the line in front of all other  
3 litigants and receive special treatment.” Id. Dkt. 181 at 2.

4 Moreover, pursuant to L.R. 7-3, not suspecting that the Government planned on filing  
5 an ex parte application, Defendant’s counsel asked for a meet and confer to discuss the  
6 motions. **Exhibit A**, Declaration of Stephen Cochell. The email exchanges between  
7 Defendant’s counsel and the Government indicates the following:

- 8 ○ On January 31, 2025, Defendant’s counsel, Stephen Cochell,  
9 requested a meet and confer on the motions, suggesting  
10 a telephone conference. “We request a meet and confer on  
11 our motion on the extradition arrest. I am flexible tomorrow  
12 if that works for you.”
- 13 ○ On February 1, 2025, Cochell again confirmed his flexibility  
14 for scheduling the meet and confer, indicating a telephone  
15 call
- 16 ○ On February 2, 2025, the Government, through Valerie  
17 Makarewicz, responded: “We prefer that everything be in  
18 writing going forward. Please put the contents of your  
19 proposed meet and confer in an email and we will respond  
20 accordingly”
- 21 ○ On February 2, 2025, Defendant’s counsel emailed Ms.  
22 Makarewicz stating: “We believe that L.R. 7-3 requires the  
23 parties to confer n person (if feasible) or at least b phone if  
24 necessary, insisting that we put everything in writing does  
25 not comply with the rule. We want to discuss your intention  
26 to seek declaring Mr. Cardiff a fugitive and seeking bond  
27 forfeiture.”
- 28 ○ On February 3, 2025, counsel wrote Ms. Makarewicz that:  
“The Local Rules require that we talk about the motions  
before we file the motions, including your motion to declare  
Mr. Cardiff a fugitive and regarding forfeiture of bond.”

L.R. Rule 7-3 makes it very clear that:

“In all cases not listed as exempt in L.R. 16-12, ... counsel  
contemplating the filing of any motion must first contact  
opposing counsel to discuss thoroughly, preferably in

1            person, the substance of the contemplated motion and any  
2            potential resolution. The conference must take place at  
3            least 7 days prior to the filing of the motion.” (emphasis  
4            supplied)

5            The purpose underlying Rule 7-3 is to have the parties thoroughly exchange  
6            their views and try to resolve a motion prior to filing a motion. This Court recently  
7            directed Defendant’s counsel to file Defendant’s application regarding Fourth  
8            Amendment violations on the regular docket. Dkt. 191, Transcript of January  
9            30,2025 Hearing at 3-4.

10           **II. No Evidence of an Emergency**

11           At the outset, it should be noted that Government counsel incorrectly asserts that  
12           Mr. Cardiff had an expired U.S. passport. In fact, he traveled on a *valid* passport  
13           released to him by Pretrial Services. The Garda returned Defendant’s U.S. Passport, as  
14           evidenced by a receipt. Exhibit B, Cardiff Declaration, Ex. 1. Pretrial Services has  
15           Mr. Cardiff’s Irish passport. Government counsel apparently did not confer with  
16           Pretrial Services about this key fact.

17           The Government does not articulate how or why the Court must act immediately  
18           to declare Mr. Cardiff a fugitive. Mr. Cardiff filed a status report stating that he felt  
19           that he had to stay in Ireland to get the treatment he needed. From his perspective,  
20           traveling back to the United States presents a high risk of permanent injury to his health,  
21           a concern shared by Dr. M.S. He was in regular contact with Pretrial Services and  
22           continues to contact them to let them know his whereabouts. The treatment plan is  
23           structured over three to four months but may be terminated early if Mr. Cardiff’s  
24           specialists advise that he is medically fit to travel. Mr. Cardiff is not traveling through  
25           Europe but is at his home in Dublin getting medical treatment for serious health  
26           problems. As set out in his Status Report, “Mr. Cardiff fully intends to return to the  
27           United States but cannot do so immediately due to his health condition.” Dkt. 178. Mr.  
28

1 Cardiff filed a motion with this Court requesting to attend the January 29, 2025, hearing  
2 via Zoom, demonstrating his willingness to participate in the proceedings.

3 In sum, these matters can be handled on the Court's regular motion calendar.

### 4 **III. The Speedy Trial Act**

5 The Government cannot have it both ways; that is, argue that Defendant must  
6 comply with the meet-and-confer rules and then file an ex parte application that should  
7 be handled on the Court's regular motions calendar.

8 The Government invokes the Speedy Trial Act as its authority to declare Mr.  
9 Cardiff a "fugitive." The text of the Speedy Trial Act does not include a definition or  
10 of the term "fugitive." 18 U.S.C. § 3161(h) provides that the Court may exclude any  
11 period of delay resulting from the absence or unavailability of the defendant from the  
12 time within which the trial must commence. A defendant is considered absent when  
13 their whereabouts are unknown and they are attempting to avoid apprehension or  
14 prosecution, or their whereabouts cannot be determined by due diligence. *Id.*

15 The Government knows full well that Defendant will gain no advantage in this  
16 case from his absence from the United States.

17 The Government's rush to get this matter before the Court on an ex parte basis is  
18 a response to Mr. Cardiff's motion to unearth the facts as to why he was arrested by the  
19 Garda on January 14, 2025----literally a day after Defendant's counsel's January 12,  
20 2024 request for the Government to concur in an extension of travel related to Mr.  
21 Cardiff's medical treatment. The timing and nature of this motion, and refusal of the  
22 Government's prosecutors to deny their involvement in the arrest strongly suggests that  
23 this motion was filed ex parte and in response to the exposure of the Government's  
24 apparent misconduct.

25 The Government had over two weeks to figure out what happened before the  
26 Court's January 30, 2025 hearing and deny their involvement, but did not provide any  
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1 information about why Mr. Cardiff was the subject of a thirteen extradition warrant.  
2 Dkt. 191.

3 The Government is well aware of the Fugitive Disentitlement statute, which  
4 defines fugitive status. 28 U.S.C. § 2466. A defendant must be actively avoiding a  
5 properly issued warrant to evade the court's jurisdiction, which is not the case here.  
6 Defendant has been directed by doctors not to fly or risk more serious health problems,  
7 is maintaining contact with Pretrial Services, and wants to participate in pretrial  
8 motions and appear for trial.

9 **IV. Conclusion**

10 The Government's rush to disregard the Local Rules should not be allowed.  
11 On one hand, the Government invokes the rules when it suits their purposes, but  
12 ignores the Local Rules to try to obtain a favorable ruling from this Court.

13 Mr. Cardiff is hardly a fugitive in any sense of the word. While he did not  
14 return on January 19, 2025 pursuant to the Court's order, Mr. Cardiff is living with  
15 this wife and daughter and receiving treatment for his health condition. Indeed, the  
16 Garda confronted Mr. Cardiff at his home in Ireland. Until this unexpected  
17 acceleration of his symptoms and illness occurred, Mr. Cardiff diligently followed the  
18 Bond conditions, maintains a business in the United States, has children and friends in  
19 the United States. In short, Mr. Cardiff fully intends to return to the United States for  
20 trial and appear before the Court for trial on the charges.

21 WHEREFORE, Defendant requests that the Government's Ex Parte  
22 Application be denied.  
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1 Dated: February 5, 2025

2  
3 By: /s/ Stephen R. Cochell

4 Stephen R. Cochell

5 Attorney for Defendant

6 JASON EDWARD THOMAS CARDIFF

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17 **SERVICE LIST**

18 I HEREBY DECLARE THAT THE FOLLOWING COUNSEL HAVE BEEN SERVED WITH  
19 THIS DEFENDANT JASON CARDIFF'S NOTICE OF MOTIO AND MOTION TO SUPPRESS  
EVIDENCE THROUGH THE COURT'S ECF O NEXT GEN ELECTRONIC FILING SYSTEM:

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21 Jenkins

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4 /S/ Stephen R. Cochell  
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